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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,286	10/04/2005	Daniel Hiddink	5146-10PUS	1966

27799 7590 02/26/2007
COHEN, PONTANI, LIEBERMAN & PAVANE
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EXAMINER

GERRITY, STEPHEN FRANCIS

ART UNIT	PAPER NUMBER
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3721

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

ED

Office Action Summary

Application No.

10/552,286

Applicant(s)

HIDDINK ET AL.

Examiner

Stephen F. Gerrity

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-25, 27 and 28 is/are rejected.
- 7) ☒ Claim(s) 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/4/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Preliminary Amendment

1. Receipt is acknowledged of a preliminary amendment, filed 4 October 2005, which has been placed of record and entered in the file.

Information Disclosure Statement

2. Receipt is acknowledged of an Information Disclosure Statement, filed 4 October 2005, which has been placed of record in the file. An initialed, signed and dated copy of the PTO-1449 form is attached to this Office action.

Specification

3. The disclosure is objected to because of the following informalities:
 - in paragraph [0003], line 1, the phrase "A device this" should be changed to -- A device of this--; and
 - in paragraph [0034], line 2, "23" should be changed back to --21-- (see page 4, paragraph [0031]).

Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 13, 15, 21, 23, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown (**US 2,877,680**).

The Brown device teaches a distribution device including: a roll frame (25); first and second non-cylindrical rollers (21, 21') which are both tapered or conical, and include a gap therebetween which is of substantially uniform width (col. 4, lines 43-64), note also that there are non-cylindrical sections (32); a motor (28), pulley (27) and belt (26) connected to the first and second rollers are deemed to be equivalent to applicant's claimed first means to rotate the first roller and second means to rotate the second roller in opposite directions. Regarding the device being for introducing pharmaceutical products, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987). Furthermore, the recitations found in the preamble (lines 1-3) generally are not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See In re Hirao, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and Kropa v. Robie, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

6. Claims 13, 15, 17, 21, 23, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Randrup (**US 3,687,263**).

The Randrup device teaches a distribution device including: a roll frame (30); first and second non-cylindrical rollers (26, 28) which are both tapered or conical (58), and include a gap therebetween which is of substantially uniform width (S), note also that

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there are non-cylindrical sections (50, 52) which have a hyperbolic shape; a drive assembly (114) connected to the first and second rollers (26, 28) is deemed to be equivalent to applicant's claimed first means to rotate the first roller and second means to rotate the second roller in opposite directions. Regarding the device being for introducing pharmaceutical products, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987). Furthermore, the recitations found in the preamble (lines 1-3) generally are not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See In re Hirao, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and Kropa v. Robie, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

7. Claims 13, 14, 18-25, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Lowrance (**US 4,729,501**).

The Lowrance device teaches a distribution device including: a roll frame (20); a plurality of pairs of first and second non-cylindrical rollers (66, 68), and include a gap therebetween which is of substantially uniform width (S), a drive assembly (see figures 3,5) connected to the first and second rollers (66, 68) is deemed to be equivalent to applicant's claimed first means to rotate the first roller and second means to rotate the second roller in opposite directions. Regarding the device being for introducing

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pharmaceutical products, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987). Furthermore, the recitations found in the preamble (lines 1-3) generally are not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See In re Hirao, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and Kropa v. Robie, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Concerning claim 14, Lowrance discloses a pan (28, 30, 32,34), an isolating block (defined by the gap between blocks 72) to receive the objects from the gap between the rollers (66, 68), and a plurality of isolating channels (22 formed in plate (20)) extending downstream of the isolating block and configured to sequentially convey the objects. Regarding claims 19 and 20, there is a cover frame having a web (defined by triangular portions (80)) extending parallel to the rollers (66, 68). Regarding claim 22, the chain 88 is considered equivalent to the claimed endless belt. The drive assembly of Lowrance is considered to be fully capable of rotating the rolls at different rotational speeds and it includes what is structurally equivalent to applicant's claimed first and second driving means.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (**US 2,877,680**).

It would have been an obvious matter of engineering choice to have changed the shape of the non-cylindrical sections 32 of the Brown device to have been either parabolic or hyperbolic, since such a modification would have involved a mere change in the shape or form of a component. A change in shape or form is generally recognized as being within the level of ordinary skill in the art. In re Dailey, 149 USPQ 47 (CCPA 1976). The change in shape of the non-cylindrical sections 32 of Brown would permit screws with different head shapes to be passed to chute 34.

10. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Randrup (**US 3,687,263**).

It would have been an obvious matter of engineering choice to have changed the shape of the non-cylindrical sections 50, 52 of the Randrup device to have been parabolic, since such a modification would have involved a mere change in the shape or form of a component. A change in shape or form is generally recognized as being within the level of ordinary skill in the art. In re Dailey, 149 USPQ 47 (CCPA 1976). The change in shape of the non-cylindrical sections 50, 52 of the Randrup would permit corks with different head shapes to be passed to chute 22.

Allowable Subject Matter

11. Claim 26 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

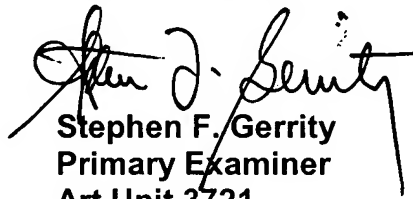
12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references listed on the attached form (PTO-892) are cited to show various machines for distributing articles. All are cited as being of interest and to show the state of the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen F. Gerrity whose telephone number is 571-272-4460. The examiner can normally be reached on Monday - Friday from 5:30 - 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Stephen F. Gerrity
Primary Examiner
Art Unit 3721

20 February 2007